* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ Bail Application No.820/2007

% Date of Decision : 23rd July, 2007

\# LALIT GOEL .....Petitioner

! Through : Mr. G.L. Rawal, Sr. Adv.
with Mr. Rajesh Rawal, Adv.

versus

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COMMISSIONER OF CENTRAL EXCISE (DELHI-I) .....Respondent

^ Through : Mr. Satish Aggarwal, Adv.
with Ms. Pooja Bhaskar, Adv.

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

: **B.N.CHATURVEDI, J.**

1. The petitioner faces prosecution under Section 135 of the Customs Act for alleged evasion of customs

duty to the tune of Rs.1.27 crores.

2. The petitioner, as proprietor of M/s Pioneer Soap and Chemicals, imported Crude Palm Oil (non-edible grade) for manufacture of washing soap at concessional rate of customs duty during the period of 13th January, 2005 to 11th August, 2005 against 6 bills of entry. He thus against 65% of normal customs duty, while seeking exemption in respect of six consignments of imported raw material, deposited in cash duty at concessional rate of 20% and out of balance of 45%, 20% was secured by FDR and the rest of 25% by furnishing bonds. The petitioner in all imported consignment to the extent of 1371.878 MT during the said period availing benefit of payment of only part of duty. Against six bills of entry, bonds against four bills of entry were later discharged and FDRs returned to the petitioner.

3. According to the prosecution, the petitioner

availed benefit of concessional rate of customs duty by furnishing false returns and fabricated documents to the jurisdictional Central Excise Authorities. The statements of witnesses show that the consignments were, in fact, diverted to the Ghee manufacturers in U.P. and Haryana and no washing soap was actually manufactured by him, as claimed. It was pointed out that the applicant was functioning under Self Assessment Scheme and as such he was only to maintain a simple account in respect of receipt and consumption of the imported raw material for production before the Assistant Commissioner of Central Excise as and when so required. As a certain degree of trust had to be reposed under the Self Assessment Scheme in the matter of maintenance of the records by the petitioner, the records maintained by him, were not being officially checked. The bonds in respect of four bills of entry out of six were

discharged and FDRs released to the petitioner on a bonafide assumption that the relevant records were being truly and correctly maintained.

4. Mr. G.L. Rawal, senior counsel, appearing for the petitioner, argued that out of the amount of alleged evaded customs duty to the tune of Rs.1.27 crore, apart from deposit of duty in cash at concessional rate of 20%, 10 lakhs have been deposited by the petitioner on being pressurized in that regard and FDRs for Rs.11 lakhs being already with the complainant, there is only a difference of Rs.20/21 lakhs. He contended that on completion of investigation a complaint has already been filed before the Court concerned and thus keeping the petitioner in confinement is not likely to serve any useful purpose. Referring to a single Bench decision of the Bombay High Court in "Sangit Krishna Kumar Agrawal Vs. Union of India & Ors.", 2007 (79) RLT

110 (Bom) rendered by relying upon an earlier single Bench judgment of the same Court in "Subhash Chaudhary Vs. Deepak Jayala & Ors", 2004 (64) RLT 651 (Bom) as also a Punjab and Haryana High Court decision dated 6th March, 2006 in "Kulbhushan Goyal v. Joint Commissioner of Customs, CFS, Focal Point, Ludhiana" in Criminal Misc. Nos.71789-M-2005, learned senior counsel argued that since an offence under Section 135 (1) (ii) of the Customs Act, 1962 (for short the 'Act') is punishable with imprisonment which may extend to three years or fine or both, it would constitute only a bailable offence and the petitioner is, therefore, as a matter of right, entitled to be released on bail. It was submitted that the cancellation of bonds and release of FDRs in respect of four bills of entry out of six, show that the records, which were produced by the petitioner before the authority concerned at the relevant time, were

accepted to be truly and correctly maintained and that now it is not open to the complainant to turn around to say that the records so produced by him before the authority concerned, were false and fabricated ones.

5. A counter argument was raised on behalf of the prosecution that the bonds in relation to four bills of entry were discharged and FDRs released believing that the relevant records produced by the petitioner were truly and correctly maintained by the petitioner. The law, it was contended, reposed an absolute trust in petitioner as he was functioning under Self Assessment Scheme and was obliged to maintain a simple account in respect of receipt and consumption of imported goods to produce the same before the authority concerned as and when required. It was only later in the course of investigation, discovered that the records, which were produced in respect of

aforesaid four bills of entry, were actually false and fabricated ones as instead of using the consignments in question for manufacture of washing soap, the same were actually found to have had been diverted by the petitioner to Ghee manufacturers in U.P. and Haryana. In this connection, learned counsel for complainant referred to statements of transporter/s, consignment agents and reports of jurisdictional Central Excise Authorities. Learned counsel for the complainant in the context of defence plea that an offence punishable under Section 135 (i) (ii) of the Act falls within the category of bailable offences pointed out that the decision of the Bombay High Court in Subhash Chaudhary (Supra) holding the offence punishable under Section 135 (1) (ii) of the Act bailable and which forms basis of the other decision of the Bombay High Court in Sangit Krishna Kumari Agrawal (Supra) as also of Punjab and Haryana High

Court in Kulbhushan Goyal v. Joint Commissioner of Customs, CFS, Focal Point, Ludhiana being under a stay by the Supreme Court, cannot be used to lend assurance to the plea that the offence complained of is a bailable one. On Behalf of the complainant, reference was made to a number of decisions including "State Vs. Capt. Jagjit Singh", AIR 1962 SC 253, "State of Maharaashtra Vs. Nainimal Punjaji Mal Shah & Anr.", 1969 (3) SCC 904, "State of Gujrat Vs. Mohan Lal Jetamalji Porwal & Anr.", AIR 1987 SC 1321, "State Vs. Jaspal Singh Gill", AIR 1984 SC 1503, "N. Sasikala Vs. Enforcement Officer, Enforcement Directorate, Madras", 1997 (1) Crimes 168 and "Sanjay Verma Vs. State", 1991 JCC 273 in opposition to the bail plea.

6. It was pleaded that as a complaint has already been filed and cognizance taken by the Court concerned and the matter is now posted for pre-

charge evidence, the release of the petitioner on bail, at this juncture, may jeopardise the prospect of a fair trial as there is a reasonable apprehension of petitioner tampering with the evidence by intimidating, pressurising or influencing the public witnesses keeping in view his past conduct. Learned counsel submitted that to ensure that the trial is speeded up, the matter may be directed to be taken up on day to day basis and concluded within a specified time frame. Learned counsel sought to assure that for complainant only two effective dates would suffice to conclude its pre-charge evidence.

7. Adverting to the individual points raised in support of plea for bail, the fact that against alleged customs duty evasion to the extent of Rs.1.27 crores only a difference of Rs.20/21 lacs remains recoverable from the petitioner is of little consequence in finding if the petitioner has committed an offence punishable

under Section 135(1)(ii) of the Act. The amount of customs duty deposited at a concessional rate of 20% and furnishing of FDRs for Rs.11 lacs had, in any case, to be made by the petitioner to avail of the benefit of importing raw material at a concessional rate of customs duty. Though according to the records maintained by the petitioner, the raw material imported against six bills of entry are shown to have been used for manufacture of washing soap, the correctness of such records was rendered questionable in the face of the statements of transporter/s, consignment agents and reports of jurisdictional Central Excise authorities. The raw material imported against six bills of entry were found to have had actually been diverted by the petitioner to ghee manufactures in UP and Haryana instead of using the same for manufacture of washing soap. No doubt in respect of four bills of entry out of six the

bonds furnished by the petitioner were discharged and the FDRs released, but it was done as the authority concerned, at the relevant time, acted under a bona-file belief that the relevant records produced by the petitioner were truly and correctly maintained. Falsity of returns and fabrication of documents could be discovered only on evidence regarding diversion of imported raw material to ghee manufacturers instead of user thereof for manufacture of washing soap being collected. Where on arrival of imported raw material and release of consignments thereof the same are shown to have, instead of being taken to the factory premises of the petitioner, been diverted to the ghee manufactures in UP and Haryana, the records showing receipts of such raw material at factory premises and user thereof in manufacture of washing soap would prima facie render the genuineness and correctness of the records maintained by the

petitioner questionable. Simply because in respect of import of raw material against four bills of entry out six, on the basis of records produced by the petitioner, bonds and FDRs furnished against the same were discharged and released could not be a reason to brush aside contrary evidence that came to the notice of the prosecuting agency. Thus, in view of prima facie evidence of petitioner availing the benefit of importing raw material at a concessional rate of customs duty by furnishing false returns and fabricated documents and thereby evading payment of normal customs duty, it is altogether immaterial as to how much amount on account of evasion of customs duty remains recoverable as on date.

8. The other argument raised by learned senior counsel for the petitioner, based on the decisions referred to above, that an offence punishable under Section 135(1)(ii) of the Act being a bailable one, the

petitioner is, as a matter of right entitled to bail, is unacceptable in the face of a decision of this Court in "Mohan Lal Thapar Vs. Y.P.Dabara, Inspector, Customs, New Customs House, New Delhi", 2002 (1) JCC 460 and another decision dated 1.3.2005 in Bail Application No.1902/2004 entitled "Inderjeet Nagpal Vs. Director of Revenue Intelligence(DRI)", clearly holding against an offence punishable under Section 135(1)(ii) of the Act being a bailable one. Even otherwise, as pointed out by learned counsel for the respondent-complainant, the decision of the learned Single Judge of the Bombay High Court in Subhash Chaudhary(supra), which forms basis for the other two decisions, referred to above, holding an offence punishable under Section 135(i)(ii) of the Act as bailable being under stay by the Supreme Court in "Union of India & Another Vs. Subhash Chaudhary & Another" , in petition(s) for special leave to appeal(crl.)

No.5369-5370/04, no sustenance to the aforesaid plea can be drawn from these decisions.

9. The petitioner is, no doubt, in confinement since 28th of February, 2007, his period of detention alone, however, in the given facts and circumstances, cannot supply adequate justification for his release on bail.

10. Economic offences consitute a class apart and need to be visited with a different approach in the matter of bail. Ever growing materialistic outlook setting unscrupulous elements on a prowl to maximise material gains by unlawful means, needs to be placed in shackles by appropriate legislative measures and judicial intervention if the interest of the public at large and the State are to be safeguarded. Personal liberty of an individual though precious, is of little value if the larger interest of the people and the Nation are at stake. Period of

detention in jail may though continue to be a ground for consideration in deciding the question of grant of bail, societal and/or National interest must outweigh such consideration. National interest must reign supreme in all situations and sacrificing individual interest of a person posing threat to it can never be a bad bargain.

11. Nature and seriousness of the offence, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and the State are some of the considerations that have to be kept in view to decide the question of grant of bail to a particular accused.[see Capt. Jagjit Singh(supra)]. In the present case, apart from there being a prima facie case of customs duty evasion by the petitioner to the extent of 1.27 crores, another disturbing aspect that has to be kept in mind is that not only that the petitioner by his alleged criminal act

caused loss to the public revenue, he, by diverting non-edible grade crude palm oil, meant for manufacture of washing soap, to Vansapati ghee manufacturers played for his selfish gain with the health of public at large thereby adding to the gravity of the offence. Thus, taking into account the nature and seriousness of the offence and reasonable apprehension of the witnesses being tampered with as also the larger interest of the public and the State, the petitioner does not deserve his release on bail. His bail plea is, therefore, declined and the petition is dismissed. However, keeping in view that the petitioner is in jail custody since 28th of February, 2007, the learned trial court shall endeavour to expedite the trial and conclude it within a period not later than six months from this date. The period of delay occasioned on account of adjournments sought on behalf of the petitioner shall not count towards

this six months period.

12. The petition stands disposed of.

(B.N.CHATURVEDI)
JUDGE

July 23, 2007
bg/RS